

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**RICK L. EDWARDS,**  
Plaintiff,

v.

**Case No. 05-C-1206**

**MATTHEW J. FRANK,**  
**DR. M. JOSEPH,**  
**SUE NYGREN,**  
**J CARLSON, and**  
**LENILU,**  
Defendants.

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**DECISION AND ORDER**

Plaintiff Rick L. Edwards, proceeding pro se, seeks relief under 42 U.S.C. § 1983 alleging that defendants violated his constitutional rights in several respects. On April 21, 2006, defendants filed a motion to dismiss plaintiff's claims. Plaintiff did not respond to the motion. On December 27, 2006, I entered an order denying several miscellaneous motions. The copy of the order sent to plaintiff was returned as undeliverable. The clerk contacted the Racine Correctional Institute to inquire about plaintiff's undeliverable mail, and prison officials informed her that plaintiff is deceased. Master Records in Madison confirmed that plaintiff passed away on August 28, 2006. As of today, defendants have not filed a suggestion of death on the record under Fed. R. Civ. P. 25(a).

The objective of the suggestion of death set forth in Rule 25(a)(1) is to alert nonparties to the consequences of the death of a party in a pending lawsuit and to signal them that they must act if they desire to preserve the decedent's claim. Fariss v. Lynchburg Foundry, 769 F.2d 958, 962 (4th Cir.1985). The purpose of Rule 25(a)(1) is to establish a procedure that protects those who have an interest in the litigation and authority to act on behalf of the decedent by permitting substitution for the deceased party without unduly burdening the

surviving party and without unreasonably delaying the litigation. Barlow v. Ground, 39 F.3d 231, 233-34 (9th Cir.1994).

Therefore, I will deny the pending motion to dismiss without prejudice with leave to refile after they have filed a suggestion of death. In the meantime, I will stay the case.

Therefore,

**IT IS ORDERED** that defendant's motion to dismiss is **DENIED WITHOUT PREJUDICE**.

**IT IS FURTHER ORDERED**, that this matter is **STAYED** pending the filing of a suggestion of death by defendants.

**FINALLY, IT IS ORDERED** that defendants report to the court on the status of their efforts no later than **June 1, 2007**.

Dated at Milwaukee, Wisconsin this 30 day of March, 2007.

/s \_\_\_\_\_  
LYNN ADELMAN  
District Judge